

**A Angkasa Jurutera Perunding Sdn Bhd v
Pendaftar Syarikat (Ketua Pegawai Eksekutif,
Suruhanjaya Syarikat Malaysia) & Anor**

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO D1-
21-3 OF 2003

B VINCENT NG J
22 DECEMBER 2003

*Companies and Corporation — Name — Change of name — Registration of company
name — Name resembling name of existing company — Companies Act 1965 ss 11(10),
22(1), (2), (7)*

C The plaintiff is a company of consulting engineers carrying on their business under the trade name 'Angkasa Jurutera Perunding' since 1972, initially as a sole proprietorship and subsequently as a private limited company. The second defendant, also a company of consulting engineers, was co-founded by the key personnel of the plaintiff, namely one Woo Hin Wai and Dato' Muhammad Yusof bin Hindon, as part of a joint venture project between the plaintiff and the Australian engineering firm of Gutteridge Haskins & Davey Pte Ltd ('GHD'). Hence, the second defendant was named 'Angkasa-GHD Jurutera Sdn Bhd'. Subsequently, both Woo Hin Wai and Dato' Muhammad Yusof bin Hindon resigned as directors and relinquished their shareholdings in the second defendant. GHD followed suit and upon their withdrawal, requested that the second defendant refrain from using the words 'GHD' in their name. This led the second defendant to make an application to the first defendant to change their name and from 9 January 2002, the second defendant was known as 'Angkasa Consulting Services Sdn Bhd'. The plaintiff maintained that the undesirability of the second defendant's name stemmed from their similarity to the plaintiff's name and the fact that both the plaintiff and the second defendant served as consulting engineers. The plaintiff's concern over the likelihood of the businesses being confused for the other, led them to apply for a change of name to 'Angkasa Consultant Group Sdn Bhd'. Ironically, the application was rejected by the first defendant on the ground that the new name was similar to the second defendant's name.

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Held, dismissing the application with costs:

- H** (1) The names 'Angkasa Jurutera Perunding Sdn Bhd' and 'Angkasa Consulting Services Sdn Bhd' were in no way identical or closely similar, and read as a whole, clearly denoted two different companies (see para 13).
- (2) The word 'Angkasa' was a common word, the use of which as a company's name did not require the prior approval of the Minister. The word 'Angkasa' was not descriptive of any business and as such, no one ought to have monopoly over the usage of that particular word as a trade name. Even when the plaintiff's name was translated into the English language the word 'Services' in the second defendant's name would effect sufficient and material distinction from the word 'Engineers' in the plaintiff's name (see para 14).
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- (3) The first defendant's exercise of his wide discretion under s 22(1) of the Companies Act 1965 in approving the second defendant's name, was not wrong on points of fact or law and had not in any manner erred (see para 18).

Obiter:

The plaintiff could have availed themselves of s 11(10) of the Companies Act 1965 and appealed to the court against the first defendant's decision within the prescribed 30 days of the first defendant's decision. A statute may provide for an internal in-house appeal or an appeal to the court. The plaintiff could also have moved this court for a judicial review under the new O 53 of the Rules of High Court 1980 through an originating motion for the common law writ of mandamus to compel the first defendant to remove the second defendant's name from the register. Provided that leave must first be obtained upon an application made within 40 days (or the delay accounted for to the satisfaction of the court) from the date when grounds for the application first arose or from when the decision is first communicated to the applicant (see paras 19–20).

[Bahasa Malaysia summary]

Plaintiff adalah sebuah syarikat jurutera perunding yang berniaga atas nama 'Angkasa Jurutera Perunding' semenjak 1972, bermula sebagai tuannya tunggal dan kemudian sebagai sebuah syarikat persendirian terhad. Defendan kedua juga adalah sebuah syarikat jurutera perunding yang telah ditubuhkan oleh pekerja utama plaintiff, iaitu satu Woo Hin Wai dan Dato' Muhammad Yusof bin Hindon, sebagai satu perniagaan bersama di antara plaintiff dan sebuah syarikat kejuruteraan Australia iaitu Gutteridge Haskins & Davey Pte Ltd ('GHD'). Oleh kerana itu defendan kedua dinamakan 'Angkasa-GHD Jurutera Sdn Bhd'. Kemudian, kedua-dua Woo Hin Wai dan Dato' Muhammad Yusof bin Hindon telah meletakkan jawatan sebagai pengarah dan melepaskan saham mereka dalam syarikat defendan kedua. GHD juga mengikut sama dan bersama dengan penarikan balik itu, mereka telah meminta defendan kedua berhenti menggunakan perkataan 'GHD' dalam nama mereka. Ini menyebabkan defendan kedua membuat satu permohonan kepada defendan pertama untuk menukar nama mereka dan dari 9 Januari 2002 defendan kedua dikenali sebagai 'Angkasa Consulting Services Sdn Bhd'. Plaintiff mengesahkan bahawa ketidakingingan mengenai nama defendan kedua adalah kerana persamaan dengan nama plaintiff dan kerana plaintiff dan defendan kedua adalah jurutera perunding. Kerisauan plaintiff mengenai kemungkinan perniagaan mereka dikelirukan telah menyebabkan mereka membuat permohonan untuk menukar nama kepada 'Angkasa Consultant Group Sdn Bhd'. Tetapi permohonan mereka telah ditolak oleh defendan pertama atas alasan bahawa nama baru itu adalah sama dengan nama defendan kedua.

Diputuskan, menolak rayuan dengan kos:

- (1) Nama 'Angkasa Jurutera Perunding Sdn Bhd' dan 'Angkasa Consulting Services Sdn Bhd' tidak ada persamaan atau hampir-hampir serupa,

- A** dan keseluruhannya, jelas bahawa nama kedua-dua syarikat adalah berlainan (lihat perenggan 13).
- (2) Perkataan 'Angkasa' adalah satu perkataan yang biasa dan penggunaannya tidak memerlukan kebenaran terdahulu daripada Menteri. Perkataan 'Angkasa' tidak menerangkan apa-apa jenis perniagaan dan oleh itu tiada sesiapa pun yang boleh memonopoli penggunaan perkataan tersebut
- B** sebagai nama perdagangan. Jika nama plaintif diterjemahkan kepada Bahasa Inggeris perkataan 'Services' dalam nama defendan kedua adalah berbeza daripada perkataan 'Engineers' dalam nama plaintif (lihat perenggan 14).
- (3) Penggunaan budibicara defendan pertama bawah s 22(1) Akta Syarikat 1965 dalam meluluskan nama defendan kedua tidak salah berdasarkan perkara fakta atau undang-undang dan tidak melalui apa-apa cara salah (lihat perenggan 18).
- C**

Obiter:

- D** Plaintif sepatutnya boleh bergantung pada s 11(10) Akta Syarikat 1965 dan membuat rayuan kepada mahkamah atas keputusan defendan pertama dalam jangka masa 30 hari dari keputusan defendan pertama. Plaintif juga boleh meminta mahkamah ini untuk semakan kehakiman bawah A 53 Kaedah-Kaedah Mahkamah Tinggi 1980 melalui usul semula untuk writ common law mandamus untuk memaksa defendan pertama untuk mengalihkan nama defendan kedua dari daftar. Tetapi kebenaran mesti diperolehi dahulu apabila permohonan dibuat dalam jangkamasa 40 hari (atau kelewatan mesti dijelaskan kepada kepuasan mahkamah) dari tarikh alasan untuk permohonan mula dibangkitkan atau apabila keputusan diberitahu kepada pemohon (lihat perenggan-perenggan 19–20).]
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Notes

For cases on change of company's name, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 498–499.

- G** For name and change of name see 13 *Halsbury's Laws of Malaysia* paras [230.076]–[230.079].

Cases referred to

- Abacus Finance Ltd v Registrar of Companies* [1985] 2 NZLR 607 (refd)
- H** *Accountant in Bankruptcy v Alls of Gillock* [1991] SLT 765 (refd)
- Bristol Conservatories Ltd v Conservatories Custom Built Ltd* [1989] RFC 455 (refd)
- Drilex Systems Pte Ltd v Registrar of Companies & Anor* [1991] 1 MLJ 473 (refd)
- Erven Warnink Besloten Vennootschap v J Townsend & Sons (Hull) Ltd* [1979] AC 731 (refd)
- I** *Lai Cheng Cheong v Sowaratnam* [1983] 2 MLJ 113 (refd)
- Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan Bhd* [1981] 1 MLJ 234 (refd)
- Macksville & District Hospital v Mayze* [1987] 10 NSWLR 708 (refd)

- Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1 (refd) **A**
R v Commissioner for the Special Purposes of the Income Tax Acts; ex p Napier [1988] 3 All ER 166 (refd)
R v Epping Forest DC; ex p Green [1993] 1 COD 81 (refd)
Reckitt & Coleman Products Ltd v Borden Inc [1990] 1 WLR 491 (refd)
Revertex Ltd & Anor v Rivertex Sdn Bhd & Ors [1991] 1 MLJ 508 (refd) **B**
Shell Malaysia Trading Sdn Bhd v Pemungut Duti Setem, Pulau Pinang [1998] 1 MLJ 726 (refd)
South Pacific Airlines of New Zealand Ltd v Registrar of Companies [1964] NZLR 1 (refd)
Tan Gek Neo Jessie v Minister for Finance & Anor [1991] 2 MLJ 310 (refd)

Legislation referred to

Companies Act 1965 ss 11(10), 22(1), (2), (7)
 Courts of Judicature Act 1964
 Rules of the High Court 1980 O 53

- Tj Su (Justin Chin and Edward Kok with him) (Cheah Teh & Su) for the plaintiff.* **D**
Osman bin Bujang (YL Chong & Assoc) for the defendants.

Vincent Ng J:

Preamble

[1] On 30 June 2003, I dismissed encl 15, the plaintiff's amended application for, inter alia, a declaration that the second defendant's name was undesirable and an order that the first defendant direct the second defendant to change their name to another which is not undesirable and which is not similar to the name of the plaintiff. **E**

Background facts

[2] The plaintiff is a company of consulting engineers carrying on their business under the trade name 'Angkasa Jurutera Perunding' since 1972, initially as a sole proprietorship and subsequently as a private limited company. **F**

[3] It is noteworthy that the second defendant, also a company of consulting engineers, was co-founded by the key personnel of the plaintiff, namely one Woo Hin Wai and Dato' Muhammad Yusof bin Hindon, as part of a joint venture project between the plaintiff and the Australian engineering firm of Gutteridge Haskins & Davey Pte Ltd ('GHD'). Hence, the second defendant was named 'Angkasa-GHD Jurutera Sdn Bhd'. **G**

[4] Subsequently, both Woo Hin Wai and Dato' Muhammad Yusof bin Hindon resigned as directors and relinquished their shareholdings in the second defendant. GHD followed suit and upon their withdrawal, requested that the second defendant refrain from using the words 'GHD' in their name. This led the second defendant to make an application to the first defendant to change their name and from 9 January 2002, the second defendant was known as 'Angkasa Consulting Services Sdn Bhd'. **H**

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- A** [5] The plaintiff maintained that the undesirability of the second defendant's name stemmed from their similarity to the plaintiff's name and the fact that both the plaintiff and the second defendant served as consulting engineers. Further, the plaintiff was engaged in seven out of nine fields of specialization which the second defendant was listed under, in the panel Member Firms' Specialization page in the Association of Consulting Engineers Malaysia's Directory for 2002–2003.
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- C** [6] The plaintiff's concern over the likelihood of the businesses being confused for the other, led them to apply for a change of name to 'Angkasa Consultant Group Sdn Bhd'. Ironically, the application was rejected by the first defendant on the ground that the new name was similar to the second defendant's name.

The application

- D** [7] Section 22(1), (2) and (7) of the Companies Act 1965 read:
- (1) Except with the consent of the Minister, *a company shall not be registered by a name that, in the opinion of the Registrar, is undesirable* or is a name, or a name of a kind, that the Minister has directed the registrar not to accept for registration. (Emphasis added.)
- (2) The Minister shall cause a direction given by him under subsection (1) to be published in the Gazette.
- E** (7) If the Registrar is satisfied as to the bona fides of the application and that the proposed name is a name by which the intended company, company or foreign company could be registered without contravention of subsection (1), he shall reserve the proposed name for a period of three months from the date of the lodging of the application.

- F** [8] And, the Minister's gazette pursuant to s 22(1) and (2) Jilid 41 (No 3) dated 30 January 1997 reads:

Pursuant to sections 22(1) and 341(1) of the Companies Act 1965, the Minister directs the Registrar of Companies not to accept for registration any name of a company or a foreign company that is a name or a name of a kind mentioned in the Schedule unless prior approval of the Minister has been obtained.

G SCHEDULE

(vii) Names that are misleading as to the identity, nature, objects or purposes of a company or in any other manner.

- H** [9] The landmark case on the essential factors for consideration pertaining to registration of a company name is *South Pacific Airlines of New Zealand Ltd v Registrar of Companies* [1964] NZLR 1 at p 5 ('SPANZ case') where McGregor J, discussed the principles by first setting out the test described by Reed J thus:

- I** The matter is centred on the similarity of names, a question of fact or opinion. The test is described by Reed J in *National Timber Co Ltd v National Hardware, Timber & Machinery Co Ltd* [1923] NZLR 1258; [1923] GLR 346: The jurisdiction of this Court, then, is based upon the common law rights of the appellant, and not upon any rights under the Act. What, then, are the principles of law to be applied in

this case? These have been stated in numerous cases and in different language, but the variation in language, if examined closely, will be found to be due more to an application of the principles to the facts of the case before the Court rather than statements of different principles. In the first place it is unquestionable that the matter to be determined by the Court is a question of fact: *Aerators Ltd v Tollitt*. The principles, then, to be gathered from the numerous cases seem to show that the question to be determined is: Are the names of the companies so much alike that persons who under ordinary circumstances would be customers of such companies for the commodities in which they deal are likely to be deceived into dealing with the new company in mistake for the old, to the detriment of the latter? In considering this question it is material to ascertain: (i) Whether the two companies are dealing, inter alia, in the same commodity, (ii) Have mistakes already been made? It is not essential that there should be evidence of this fact, but where it exists it would be very material in assisting the Court in coming to the conclusion that the [name] 'complained of was calculated to deceive.' Per Farwell J, in *Bourne v Swan & Edgar Ltd* (iii) The nature of the business carried on by the two companies, and the probability, on account of that nature, of persons doing business with them making mistakes as to their identity' (ibid, 1270; 351). That action was one for an injunction to registered name or any other name resembling the plaintiff's name, but the statement is also applicable to an application for registration of a name.

[10] And, his Lordship concluded in the following language:

For the above reasons I am prepared to hold that the proposed name requested by the plaintiff may be calculated to deceive. But if I am wrong in this aspect I would still hold that the name is undesirable. In my view this provision gives to the Registrar the widest discretion, and it would be 'undesirable' to endeavour to define the limits of the discretion. What might be undesirable would include the prohibited words contained in subs (2), but the area in my view would be much more extensive. Any name of an obscene nature, it is needless to say, would be undesirable and objectionable. Any name which might give offence to a friendly State would be undesirable. The expression 'undesirable' would seem to embrace any name or names which would offend public policy or might give offence to any particular section of the community, or any particular religion. Each name must be considered by the Registrar in the light of its own merits or demerits, but it is clear that any name that might mislead the public or a recognized section of the public in any particular locality, or would be likely to cause confusion, is undesirable, irrespective of the intentions or the motives or purpose of the applicant. If the Registrar has exercised his discretion by the application of a wrong principle, or by consideration of extraneous matters, the Court may review the exercise of the discretion. Here in my view the Registrar has not so erred, and adoption of the proposed name might well cause confusion. It would seem to me not a matter of insuperable difficulty to select a name which would overcome the difficulties.

[11] From the principles expounded by McGregor J above and other case authorities, the governing principles and guidelines on this aspect of the law could be gleaned and adumbrated in synopsis form as follows:

- (a) The provision gives to the Registrar the widest discretion and it would be undesirable to endeavour to define the limits of the discretion, but the Registrar should consider the proposed name in the light of its own merits or demerits, on a careful review of the totality of the material before the Registrar.

- A** (b) The scope or ambit of ‘undesirability’ is more extensive than that spelt out in the words in the provision. The test applicable here is an objective one (see *Tan Gek Neo Jessie v Minister for Finance & Anor* [1991] 2 MLJ 310).
- B** (c) The expression ‘undesirable’ would seem to embrace any name or names which would offend public policy or might give offence to any particular section of the community, or any particular religion or a friendly State.
- C** (d) The proposed or impugned name should not so nearly resemble as to be calculated to deceive or mislead, but it is clear that any name that might mislead the public or a recognized section of the public in any particular locality, or would likely to cause confusion, irrespective of the intentions or the motives or purposes of the applicant, is undesirable and should not be accepted for registration (see *Tan Gek Neo Jessie*; also *SPANZ and Revertex Ltd & Anor v Rivertex Sdn Bhd & Ors* [1991] 1 MLJ 508).
- D** (e) While a resemblance calculated to deceive is by itself a ground for the exercise of the Registrar’s discretion, it would also be a factor requiring consideration in relation to the issue of undesirability (see *Abacus Finance Ltd v Registrar of Companies* [1985] 2 NZLR 607).
- E** (f) The court may review the exercise of the Registrar’s discretion if it is satisfied that the Registrar has applied a wrong principle or has taken extraneous matters into consideration in his determination.
- (g) The parties may be engaged in different fields of business though a common field of activity may strengthen the case (see *Erven Warnink Besloten Vennootschap v J Townend & Sons (Hull) Ltd* [1979] AC 731, at pp 741–742).
- F** (h) The proprietary right to a name is not synonymous with statutory right (see *Tan Gek Neo Jessie* at p 306). Any confusion occasioned by misrepresentation is of great evidential value though not conclusive (see *Bristol Conservatories Ltd v Conservatories Custom Built Ltd* [1989] RFC 455, and *Reckitt & Coleman Products Ltd v Borden Inc* [1990] 1 WLR 491 at p 499).
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[12] The above established guidelines were adopted in *Drilex Systems Pte Ltd v Registrar of Companies & Anor* [1991] 1 MLJ 473, *Abacus Finance Ltd v Registrar of Companies* [1985] 2 NZLR 607 and *Revertex Ltd Anor v Slim Rivertex Sdn Bhd & Ors* [1991] 1 MLJ 508 (albeit the *SPANZ* case was not cited in *Revertex*). And some the guidelines, in particular (b), (d), (g) and (h) above, bear common ground with passing-off cases. See *Revertex* (at p 511).

- I** **[13]** Guided by the principles established in these cases, I find that despite sharing a common word, the names ‘Angkasa Jurutera Perunding Sdn Bhd’ and ‘Angkasa Consulting Services Sdn Bhd’ are in no way identical or closely similar, and read as a whole, clearly denoted two different companies. Added to this, is the fact that the registered addresses of both these companies, each bearing their own registration numbers, are also different.

[14] The word 'Angkasa' is a common word, the use of which as a company's name does not require the prior approval of the Minister. The word 'Angkasa' is not descriptive of any business and as such, no one ought to have monopoly over the usage of that particular word as a trade name. This being the law, in my considered opinion, even when the plaintiff's name is translated into the English language the word 'Services' in the second defendant's name would effect sufficient and material distinction from the word 'Engineers' in the plaintiff's name.

[15] Chan Sek Keong J in *Drilex Systems Pte Ltd v Registrar of Companies* [1991] 1 MLJ 473 at p 479 held that:

... the registration of a corporation name does not, per se, give the company any proprietary interest in the name but merely a statutory right to use it and to prevent other companies to use any identical or similar name, subject however to the provisions of the Act.

[16] I viewed with caution the plaintiff's contention that they had been using the word 'Angkasa' to identify themselves for the last 30 years as the averment was unsupported.

[17] Aside from alluding to a single incident whereby the plaintiff received a phone call meant for the second defendant (which could have well been a human error), the plaintiff's claims of confusion and inconvenience have not been substantiated (see *Abacus Finance Ltd v Registrar of Companies* [1985] 2 NZLR 607).

Conclusion

[18] I find that the first defendant's exercise of his wide discretion under s 22(1) of the Companies Act 1965 ('the Act') in approving the second defendant's name, was not wrong on points of fact or law and had not in any manner erred, considering the above adumbrated principles. For this reason, the plaintiff's application in encl 15 must fail; and is dismissed with costs.

[19] Finally, a word of comment on the procedure adopted by the plaintiff would be in order. The plaintiff could have availed themselves of s 11(10) of the Act and appealed to the court against the first defendant's decision within the prescribed 30 days of the first defendant's decision, which they had not done. Be it noted that a statute may provide for an internal in-house appeal or an appeal to the court. It is trite law that when an available procedure for relief by way of an appeal to the court is prescribed by statute, any move for a declaration is proscribed, as the right of appeal is intended to be exclusive of other mode of enforcing it. See my decision in *Shell Malaysia Trading Sdn Bhd v Pemungut Duti Setem, Pulau Pinang* [1998] 1 MLJ 726 at p 736D & G; *Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan Bhd* [1981] 1 MLJ 234. Similarly, an in-house appeal provision would normally debar recourse to the courts (see *R v Commissioner for the Special Purposes of the Income Tax Acts; ex p Napier* [1988] 3 All ER 166; *R v Epping Forest DC; ex p Green* [1993] 1 COD 81).

- A** Nevertheless, even in cases where a provision for such specialized appeal obtains, the court, in exceptional circumstances, is not barred from judicial review by the non-exercise of such procedure where an aggrieved party is able to demonstrate that he is the victim of unlawful as opposed to unjustified treatment. The underlying rationale of this principle is obvious as it accords with the empirical truism that the court is best fitted to recognize and remedy the consequences of unlawful conduct, and it would generally be willing to say so and grant relief. Examples of unlawful conduct is where an applicant is able to make out a case of excess or abuse of power or breach of the rules of natural justice (see *Accountant in Bankruptcy v Alls of Gillock* [1991] SLT 765; *Macksville & District Hospital v Mayze* [1987] 10 NSWLR 708; see also *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1).
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- C**

- D** [20] They could also have moved this court for a judicial review under the new O 53 of the Rules of High Court 1980 through an originating motion for the common law writ of Mandamus (see para 1 of the Schedule to the Courts of Judicature Act 1964 read with s 1(1) of the Rules of High Court (Amendment) 2000 PU(A) 342) to compel the first defendant to remove the second defendant's name from the register (see *SPANZ and Tan Gek Neo*, see also *Lai Cheng Cheong v Sowaratnam* [1983] 2 MLJ 113). Provided that leave must first be obtained upon an application made within 40 days (or the delay accounted for to the satisfaction of the court) from the date when grounds for the application first arose or from when the decision is first communicated to the applicant. Regrettably, neither of these procedures were adopted by the plaintiff, who had instead filed the originating summons praying for, inter alia, a declaration and an order that the first defendant directs the second defendant 'to change its name to another which is not undesirable ...'.
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- F** *Application dismissed with costs.*

Reported by Simerjit Kaur

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